



ARKANSAS JUDICIARY

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Rule 59. New Trials.

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the claim on the application of the party aggrieved, for any of the following grounds materially affecting the substantial rights of such party: (1) any irregularity in the proceedings or any order of court or abuse of discretion by which the party was prevented from having a fair trial; (2) misconduct of the jury or prevailing party; (3) accident or surprise which ordinary prudence could not have prevented; (4) excessive damages appearing to have been given under the influence of passion or prejudice; (5) error in the assessment of the amount of recovery, whether too large or too small; (6) the verdict or decision is clearly contrary to the preponderance of the evidence or is contrary to the law; (7) newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial; (8) error of law occurring at the trial and objected to by the party making the application. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be filed not later than 10 days after the entry of judgment. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.

(c) Form of Motion. The motion must be in writing setting forth in separate paragraphs the grounds or assignments of error relied upon for a new trial. The grounds mentioned in section (a)(2), (3) and (7) of this rule must be supported by affidavits showing their truth and may be controverted in the same manner.

(d) Time for Filing Affidavits. When a motion for a new trial is based upon affidavits, they shall be filed with the motion. The opposing party shall have 10 days after service within which to file opposing affidavits which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(e) On Initiative of Court. Not later than 10 days after entry of judgment, the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely filed, for a reason not stated in the motion. In either case, the court shall specify in the order the ground therefor.

(f) Motion for New Trial Not Necessary for Appeal. A party who has preserved for appeal an error that could be the basis for granting a new trial is not required to make a motion for new trial as a prerequisite for appellate review of that issue.

Reporter's Notes to Rule 59: - 1. Rule 59 represents a combination of the provisions found in

FRCP 59 and features of prior Arkansas law as codified in superseded Ark. Stat. Ann. 27-1901, et seq. (Repl. 1962). This rule will apply to both legal and equitable causes and in equity court replaces the bill of review which is abolished in Rule 60.

2. FRCP 59 does not define the grounds upon which new trials may be granted. Instead, it simply incorporates by reference those grounds traditionally recognized by the federal courts. Rather than refer to a body of law by reference, Section (a) of this rule specifies the grounds upon which a new trial may be granted. These grounds are lifted from superseded Ark. Stat. Ann. 27-1901 (Repl. 1962). Thus, no changes are effected in Arkansas law by Section (a). The final sentence of FRCP 59(a) is made a part of this rule so as to permit the granting of similar relief in cases tried without a jury, whether the claims be legal or equitable. This is implicit in superseded Ark. Stat. Ann. 27-1901 (Repl. 1962), but it is expressly made a part of Rule 59.

3. Section (b) marks a significant departure from prior Arkansas practice. Under this section, a motion for new trial must be filed within ten days after entry or filing of the judgment. Under prior Arkansas law, as codified in superseded Ark. Stat. Ann. 27-1904 (Repl. 1962), such a motion had to be filed within fifteen days following the verdict or decision, regardless of when the formal judgment or decree was actually filed. *Henderson v. Skerczak*, 247 Ark. 446, 446 S.W.2d 243 (1969), *Peek v. Meadors*, 255 Ark. 347, 500 S.W.2d 333 (1973).

4. Section (c) is not found in FRCP 59, but is practically identical to superseded Ark. Stat. Ann. 27-1905 (Repl. 1962). The purpose of this provision is to insure that a motion based upon the grounds set forth in Section (a)(2) and (a)(3) and (a)(7), is supported by affidavit in order to avoid (prevent) groundless or baseless motions from being filed.

5. Section (d) is taken from Section (c) of FRCP 59. The word "served" has been changed to "filed" in keeping with the overall scheme of these rules.

6. Section (e) is identical to Section (d) of FRCP 59. There was no specific provision under prior Arkansas law which gave the trial court the authority to order a new trial on its own initiative although the court may have had the inherent power to do so.

7. Section (f) is identical to FRCP 59(e). There was no comparable provision under prior Arkansas law and its effect is to place motions under Rule 59(f) on the same footing, timewise, with motions for new trials.

Addition to Reporter's Notes, 1982 Amendment: - The word "clearly" was added to Rule 59(a)(6).

Addition to Reporter's Notes, 1983 Amendment: - Rule 59(f) is deleted. The time within which a trial court may modify, set aside or vacate judgment appears in Rule 60(b).

Addition to Reporter's Notes, 1984 Amendments: - Rule 59(f) is added to reinstate the principle of superseded Ark. Stat. Ann. 27-2127.5 (Repl. 1962). The matter of the necessity of a motion for new trial to preserve error for appeal had not been addressed in these rules.

Addition to Reporter's Notes, 1994 Amendment: - The first sentence of subdivision (a) is amended by substituting the word "claim" for the word "issues." The amendment is intended to reflect case law prohibiting a partial new trial on the issue of damages (or the issue of liability), on the theory that a jury's verdict cannot be divided by the court. E.g., *Smith v. Walt Bennett Ford*, 314 Ark. 591, 864 S.W.2d 817 (1993). As amended, subdivision (a) does not

allow a partial new trial limited to a given issue. However, it expressly authorizes, in cases involving multiple parties or multiple claims, a partial new trial with respect to a single party or single claim.

Addition to Reporter's Notes, 1999 Amendment: - Subdivision (b) has to amended by adding a new second sentence that effectively overturns *Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997), which held that a motion for new trial filed before entry of judgment is ineffective. As amended, the rule reflects the practice in the federal courts. The new third sentence provides that a motion for new trial not ruled on by the court within 30 days of its filing (or within 30 days of the date it is treated as filed) is "deemed denied as of the 30th day." This provision also appears in Rule 4(b)(1) of the Rules of Appellate Procedure-Civil but was added here as a reminder to counsel.

In addition, the title of the rule has been modified by striking the words "amendment of judgments." A provision in the original version of the rule dealing with this issue was deleted in 1983. See Addition to Reporter's Notes, 1983 Amendment.

Addition to Reporter's Notes, 2003 Amendment: - Subdivision (f) has been rewritten to reflect the holding in *Stacks v. Jones*, 323 Ark. 643, 916 S.W.2d 120 (1996).

History Text:

History. Amended May 17, 1982; amended May 16, 1983; amended July 9, 1984, effective September 1, 1984; subsection (a) amended December 5, 1994, effective January 15, 1995; amended January 28, 1999; amended March 13, 2003

Associated Court Rules:

Rules of Civil Procedure

Group Title:

VII. Judgment

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